

## Juvenile Law Case Summaries

By

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***Juvenile incident reports between 1/1/1996 and 9/1/1997 must be disclosed if statute of limitations has run [OR2001-1644] (01-3-33).***

On April 24, 2001, the Attorney General ruled in an open records opinion that a law enforcement report concerning a juvenile for an incident that occurred on or after January 1, 1996 but before September 1, 1997 is not confidential under juvenile law. If the statute of limitations for the offense being investigated has run, as in these cases, then the record is not protected from disclosure by the law enforcement privilege and must be released.

01-3-33. Attorney General Opinion No. OR2001-1644, 2001 WL 949154, 2001 Tex.Ag.Lexis \_\_\_\_ (4/24/01)[Texas Juvenile Law (5th Edition 2000)].

Mr. Arturo Valdez  
Lieutenant  
City of McAllen  
1501 Pecan Blvd.  
McAllen, Texas 78501

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 146435.

The City of McAllen Police Department (the "department") received a request for four specified police reports. Your argument attached to requested report numbers 96-22413 and 97-022091 raises section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code. Your argument attached to report numbers 97-025700 and 96-066177 raises section 552.108(a) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Family Code includes provisions that protect the law enforcement records of a child. "Child" is defined as a person who is ten years of age or older and under 17 years of age or a person who is older than seventeen years of age and younger than 18 years of age and is found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. Fam Code § 51.02(1). You raise section 51.14(d) of the Family Code. This statute was superceded with the enactment of section 58.007 of the Family Code. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). However, former Family Code section 51.14 was continued in effect to protect law enforcement records pertaining to juvenile criminal conduct that occurred before January 1, 1996. Id. Law enforcement records of juvenile conduct that occurred on or after September 1, 1997 are made confidential by section 58.007 of the Family Code. Law enforcement records of juvenile conduct that occurred on or after January 1, 1996 but before September 1, 1997, are not made confidential by statute.

Report 96-022413 is a law enforcement record of incident that occurred on April 11, 1996. Report 97-025400 is a law enforcement record of incident that occurred on July 25, 1997 Report 97-02291 is a law enforcement record of

incident that occurred on June 23, 1997. There is no indication that Report 96- 066177 is a law enforcement record of a child. These records are not made confidential by statute.

You apparently contend that Reports 96-066177 and 97-025700 are excepted from public disclosure by section 552.108(a)(1) of the Government Code. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). In *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976), the court delineated the law enforcement interests that are present in active cases. Open Records Decision No. 216 (1978). Thus, information may be withheld under section 552.108(a)(1) on a showing that the information is related to an ongoing investigation or prosecution. You relate that "in this particular case the investigation is ongoing." However, we note that the crime reported in 96-066177 is an assault that was reported on December 7, 1996. The crime reported in 97-025700 is an assault reported on July 25, 1977. These reported offenses cannot be prosecuted after two years from the commission of the offense. Code Crim. Proc §§ 12.01, 12.02. Since the prosecution of these offenses is barred by statutes of limitation, we conclude that these reports do not relate to ongoing investigations. Therefore, you have not demonstrated that release of the reports would interfere with law enforcement.

In summary, you must release all of the responsive information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

*[Balance of letter dealing with disclosure and appeal procedures is omitted.]*

Sincerely,

Michael J. Burns  
Assistant Attorney General  
Open Records Division